

### Remarks

This case has been carefully considered in light of the Final Office Action dated October 18, 2004 wherein: claims 1-65 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-34 of US Pat. No. 6,587,938; and claims 1-65 were rejected under 35 USC 103(a) over Matsuura (US Pat. No. 5,530,860) in view of Maeurer et al. (US Pat. No. 5,301,323). Reconsideration is respectfully requested.

Claims 1-65 remain pending in this case.

Concerning the obvious-type double-patenting rejection, the Applicants respectfully submit that claims 1-34 of U.S. Pat. No. 6,587,938 are directed to “[a] method of managing central processing unit (CPU) resources within a computing environment....comprising determining that an allocation of CPU resources to a partition of said computing environment is to be adjusted.” On the other hand, the Applicants’ invention, as recited in claims 1-65, involves “managing workload of a computing environment.....across two or more partitions of a plurality of partitions of said computing environment... the managing comprising dynamically adjusting allocation of a shareable resource...” The Applicants further recite that shareable resources comprise CPU resources, logical processor resources, input/output resources, channel resources, coprocessors, network adapters, and memory, among others. Thus, while U.S. Pat. No. 6,587,938 specifically involves the dynamic allocation of CPU resources as a method of managing CPU resources, the Applicants’ subject invention involves the dynamic allocation of any shareable resource as a method of managing workload across partitions of a computing environment. The Applicants’ respectfully point out that the present application and U.S. Pat. No. 6,587,938 were filed concurrently; and the dynamic allocation of a CPU resources as a method of managing CPU resources, as recited in claims 1-34 of the ‘938 patent, would not render obvious the dynamic allocation of any shareable resource as a method of managing workload across partitions of a computing environment, as recited in claims 1-65 of the present application. Therefore, the Applicants believe that the obvious-type double-patenting rejection is improper and respectfully request that it be withdrawn.

Applicants respectfully traverse the rejection of claims 1-65 under 35 USC 103(a) on Matsuura in view of Maeurer for the following reasons.

Matsuura is described on page 7 of the Office Action as describing “a computer system for managing workload goals with respect to multiple partitions (virtual machines) by assigning sharable resources (CPUs) to the partitions/VMs.” The Applicants agree that Matsuura describes predetermined assignment ratios that are assigned individually to virtual computers. However, it is essential to point out that not only are Matsuura’s predetermined assignment ratios individually determined, but they are *exactly maintained*. This is expressly stated by Matsuura as one of the goals of the invention in column 4, lines 45-51, to wit:

The present invention .....aims at providing a method of controlling the CPU of a virtual computer system so that an actual CPU can be effectively used with predetermined assignment ratios of CPU resources *exactly maintained* even though the CPU is unequally assigned. [emphasis added]

The Applicants’ thus respectfully submit that Matsuura actually teaches away from the Applicants’ invention by using predetermined, fixed ratios that are exactly maintained and never changed. Indeed, the Applicants’ invention involves “managing workload across two or more partitions .... comprising dynamically adjusting allocation of a shareable resource.” Hence, while Matsuura expressly teaches pre-assigning fixed ratios and keeping those ratios exactly as assigned, the Applicants’ are dynamically changing assignments across partitions.

Maeurer does not correct the deficiency of Matsuura with respect to dynamic allocation. For one reason, Matsuura would not even contemplate any type of dynamic allocation because the basic inventive concept of Matsuura, as expressly stated, is to pre-assign the allocations of shareable resources and never change them. Further to this point, Matsuura describes in column 7, lines 30-36, as undesirable the situation wherein the predetermined assignment ratio is temporarily unequally performed. In such situation, Matsuura states that “the temporary inequality is removed later in assigning CPU resources, and a predetermined assignment ratio can be exactly maintained.”

The Office Action states on page 7: “The Maeurer reference show a method for dynamically adjusting resource allocation for one or more partitions.” The Applicants, however, have consistently taken the position that Maeurer does not teach or suggest using partitions of any kind. Indeed, nowhere in Maeurer is there any mention or discussion of partitions.

Notwithstanding the absence of any teaching of partitions, the Office Action continues to equate the term “channel path”, as used in Maeurer, to the term “partition”, as used by the Applicants. The Applicants maintain that the terms are not equivalent. Moreover, the Applicants have attempted to further clarify the term “partition”, and thus further distinguish their invention as recited in the claims, by amending the independent claims in Amendment A, dated June 19, 2003, to expressly recite that a partition has one or more central processors allocated thereto. Since a channel path does not have one or more CPU’s allocated thereto, this amendment to the claims should make the distinction clear in the Applicants’ claims that a partition is very different from a channel path.

The Office Action contends on page 8 that “the claimed dynamic allocation for ‘two or more partitions’ clearly transcends the more narrow scope that Applicant attempts to impute through argument.” The Office Action then goes on to state that the Applicant “uses terminology that has broad meaning in the art, and thus requires a broad interpretation of the claims...”

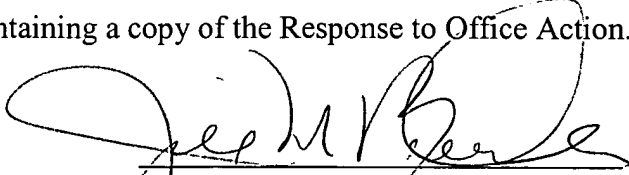
The Applicants respectfully submit, however, that the Applicants have, in fact, amended their claims in Amendment A, dated June 19, 2003, in an effort to clarify a distinction in terms, as described hereinabove, even though the Applicants believe that the distinction is already understood by those of ordinary skill in the art. The Applicants further respectfully submit that the Examiner has offered no reason or justification for maintaining the rejection of the claims based on a broad meaning of the term “partition” in view of the Applicants’ amendment to the claim language to obviate the very confusion to which the Examiner refers.

Finally, regarding the Examiner’s point that “[a]lthough the claims are interpreted in light of the specification, limitations from the specification are not read into the claims”, the Applicants respectfully submit that not only have they amended their claims to clarify the term “partition”, as described hereinabove, but the Applicants’ invention, as recited in claims 1-65, have been distinguished from Matsuura and Maeurer under 35 USC 103 hereinabove. That is, Matsuura and Maeurer, either alone or in combination, fail to teach or suggest managing workload across partitions of a computing environment, comprising dynamically adjusting allocation of a shareable resource of at least one partition, as recited by the Applicants in claims

1-65. The Applicants' thus respectfully submit that the suggested combination of Matsuura and Maeurer would not render obvious the Applicants' invention, as recited in claims 1-65.

Reconsideration and allowance of claims 1-65 are thus respectfully requested.

Should the Examiner have any further concerns regarding this application, he is invited to contact Applicants' representative at the below listed number. As requested by the Examiner, enclosed herewith is a diskette containing a copy of the Response to Office Action.



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